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COUNSEL FOR NIGEL KREFT AND
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE	§	
	§	
NIGEL MARTIN KREFT	§	CASE NO. 20-32500-HDH
MARIAN ELERI ROBERTS	§	
	§	
Debtors	§	Chapter 7
<hr/>		
	§	
NIGEL MARTIN KREFT	§	
MARIAN ELERI ROBERTS	§	
	§	
Movants	§	
	§	
vs.	§	
	§	
MONTGOMERY CAPITAL	§	
PARTNERS I, LP	§	
	§	
Respondent	§	

MOTION TO AVOID JUDICIAL LIEN ON DEBTORS' HOMESTEAD

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS MOTION WITHIN TWENTY-ONE 21 DAYS FROM THE DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS MOTION SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMLY MANNER, THE COURT WILL THERAFTER SET A HEARING. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

NOW COMES, Nigel Kreft and Marian Roberts, Debtors/Movants in the above styled and numbered cause, and makes and files this Motion to Avoid Judicial Lien on Debtors' Homestead against Montgomery Capital Partners I, LP, ("Respondent") and as grounds thereof respectfully shows the Court the following:

1. This Court has jurisdiction over this proceeding pursuant to 11 U.S.C. § 522(f)(2) and Bankruptcy Rule 4003(d).
2. Movants commenced this proceeding under Chapter 7 of Title 11 of the United States Code (the "Bankruptcy Code") on October 1, 2020.
3. Movants scheduled an interest in real property located at 7222 La Sobrina Drive, Dallas, Texas 75248 (the "Property"). The Property is Movants' homestead, and was exempted under Texas Constitution Art. 16 §§ 50, 51 and Texas Prop. Code §§ 41.001 and 41.002 pursuant to 11 U.S.C. § 522(b)(3). No objection to the claim of exemption was timely filed. A true and correct copy to Debtors' Original Schedules A/B and C are attached as Exhibit "A" and incorporated by reference.
4. Prior to the bankruptcy filing, Respondent obtained a judgment against Mr. Kreft and/or Mrs. Roberts in the 192nd Judicial District of Dallas County, Texas, in Cause No. DC-18-04931, styled *Montgomery Capital Partners I, LP v. Nigel Kreft and Marian Roberts* (the "Judgment"). Respondent filed an Abstract of Judgment in the County Deed Records of Dallas County, Texas on December 10, 2019. A true and correct copy of Respondent's Abstract of Judgment is attached as Exhibit "B" and incorporated by reference.
5. The Judgment was based upon an unpaid debt on a contract and was not for a domestic support obligation.
6. Movants' interest in the Property is claimed as exempt under 11 U.S.C. § 522(b), and

the value of such property does not exceed the statutory limit for exempt property allowed by 11 U.S.C. § 522(b).

7. Respondent does not hold a Purchase Money Security Interest in Movants' Property.

8. Respondent's lien is a judicial lien that secures a debt other than the kind specified in 11 U.S.C. § 523(a)(5).

9. The Exemption Objection period has expired as it has been more than 30 days since the §341 Meeting of Creditors.

10. The existence of the Respondent's lien and Abstract of Judgment on Movants' Property impairs the exemption to which the Movants is entitled under 11 U.S.C. § 522(b).

11. In addition, Respondent's Abstract of Judgment does not attach to homestead property and may be avoided under applicable Texas Law. See Texas Property Code § 52.0012.

WHEREFORE PREMISES CONSIDERED, Movants prays that the Court enter an order: 1) avoiding the judicial lien of Montgomery Capital Partners I, LP on Movants' Property; 2) Setting aside the Abstract of Judgment filed by Montgomery Capital Partners I, LP as to Debtors' Property; 3) and for such other and further relief to which Debtors may be entitled.

Respectfully submitted,

By: /s/ Areya Holder Aurzada

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MARIAN ROBERTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served December 17, 2020, by United States first class mail, postage prepaid on:

Nigel Kreft and Marian Roberts
7222 La Sobrina Drive
Dallas, TX 75248

Montgomery Capital Partners I, LP
2500 Dallas Parkway Suite 300
Plano, TX 75093

Gregory Wayne Ginn
1255 W. 15th Street Suite 135
Plano, TX 75075

Montgomery Capital Partners
c/o Wick Phillips Gould & Martin, LLP
3131 McKinney Avenue Suite 100
Dallas, TX 75204

and by ELECTRONIC FILING on:

Office of the U.S. Trustee
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Respectfully submitted,

By: /s/ Areya Holder Aurzada
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